

Message Text

PAGE 01 STATE 272498

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C O N F I D E N T I A L STATE 272498

LIMDIS FOR ASSISTANT SECRETARY ENDERS

FOLLOWING REPEAT LIMA 9462 ACTION SECSTATE 14 NOV 75.

QUOTE

C O N F I D E N T I A L LIMA 9462

LIMDIS

FOR ARA - WILLIAM ROGERS; L- MARK FELDMAN; EB - THOMAS ENDERS;
TREASURY - JOHN BUSHNELL; CIEP - WAYNE SHARPE; COMMERCE -
DAN ARRILL, S/P - WINSTON LORD

EO 11652: GDS

TAGS: EIND, EINV, EMIN, PFOR, PE

SUBJ: MARCONA EXPROPRIATION - MEETING WITH MARCONA
OFFICIALS MORNING OF NOVEMBER 13

1. SUMMARY: AMBASSADOR AND U.S. TEAM MET WITH FURTH, COMPTON
AND BRADFIELD THURSDAY MORNING TO INFORM MARCONA OFFICIALS
OF THE RESULTS OF WEDNESDAY EVENING'S MEETING WITH PRIME
MINISTER ALONG LINES REPORTED SEPTTEL. U.S. TEAM ALSO
TOOK THE OPPORTUNITY TO OUTLINE ITS BEST THINKING ON WHAT
OPTIONS WERE POTENTIALLY AVAILABLE, AT THIS TIME, TO
CONFIDENTIAL

PAGE 02 STATE 272498

PREVENT THE NEGOTIATIONS WITH THE GOP FROM BOGGING DOWN.
A MUTUALLY ACCEPTABLE PROPOSAL WAS HAMMERED OUT FOR THE
RESUMPTION OF ORE SALES FOR U.S. PRESENTATION TO THE GOP
THURSDAY AFTERNOON.

2. FISHLOW BEGAN BY POINTING OUT THAT MARCONA OFFICIALS HAD BEEN QUITE CORRECT IN PERCEIVING THAT THERE WOULD BE AN EXPLICIT REPUDIATION OF ANY ESCROW ARRANGEMENT. (FURTH AND BRADFIELD HAD CALLED ON WASHINGTON TEAM JUST PRIOR TO MEETING WITH PRIME MINISTER PREVIOUS EVENING TO PASS ALONG INFORMATION PICKED UP FROM RELIABLE CONTACT WHO URGED MARCONA TO WITHDRAW ESCROW PROPOSAL BEFORE IT WAS TURNED DOWN. AT SAME TIME FURTH REPORTED FROM SAME SOURCE THAT 500 MILLION DOLLARS IN LOAN REFINANCING WILL COME UP WITH U.S. BANKS IN NEAR FUTURE AND THAT THIS CERTAINLY PROVIDES ADDED INCENTIVE TO THE GOP TO COME TO SOME AGREEMENT WITH MARCONA.) THE ESCROW PROPOSAL WAS REJECTED AT THE HIGHEST POLITICAL LEVELS WITHIN THE GOP BECAUSE SUCH AN ARRANGEMENT CALLED INTO QUESTION THE GOOD FAITH OF PERU.

3. FISHLOW THEN REPEATED PRIME MINISTER'S EXPLANATION OF GOP AUDIT PROCEDURE TO ARRIVE AT A COMPENSATION FIGURE, AND GOP'S COMMITMENT TO PAY WHATEVER RESULTS. IT IS THEREFORE CLEAR THAT THESE NEGOTIATIONS ARE NOT EQUIVALENT TO A GREENE-LIKE ORIENTAL BAZAAR BUT ARE RATHER CLOSELY LINKED TO FINANCIAL DETAILS. (IT WAS UNFORTUNATE IN THIS REGARD THAT FISHLOW HAD NOT BEEN GIVEN MARCONA OPERATING RESULTS SHOWING LOSSES FOR FIRST HALF 1975 WHICH GOP SOUGHT TO USE TO GOOD ADVANTAGE.) WHEN GOP ARRIVES AT ITS VALUE, MARCONA WILL HAVE TO DECIDE WHETHER IT IS ACCEPTABLE OR NOT. IT IS ONLY FAIR AT THIS POINT TO INDICATE THAT THERE IS NO CERTAINTY THAT USG WILL REGARD FIGURES LESS THAN \$100 MILLION AS INADEQUATE. OPERATING RESULTS FOR LAST SEVERAL YEARS, WITH FULL CORRECTION FOR LOSSES IN 1973 AND 1974, AND WITH ASSUMPTIONS FAVORABLE TO MARCONA REGARDING DISCOUNT RATE, CONTRACTUAL SITUATION IN 1983 AND 1984, ETC., MAY NOT JUSTIFY A VALUE MUCH LARGER THAN \$70 MILLION. THE ACKNOWLEDGED DEBT TO THE BANCO DE LA NACION MAY ALSO HAVE GOOD LEGAL STANDING AND WOULD HAVE TO BE DEDUCTED. USG TEAM MADE CLEAR THAT WE CONFIDENTIAL

PAGE 03 STATE 272498

WERE NOT RPT NOT SUGGESTING THAT THIS WAS OUR NEGOTIATING TARGET OR VALUE ACCEPTED BY USG. WE WERE IN NO POSITION TO MAKE THAT KIND OF JUDGMENT AT THIS TIME.

4. IN LIGHT OF PRIME MINISTER'S REMARKS, U.S. TEAM RAISED FOR DISCUSSION THE QUESTION OF WHETHER WE COULD CONTINUE TO PLAY A USEFUL ROLE AT THIS TIME IN TERMS OF EXPLORING ALTERNATIVE SOLUTIONS TO HELP BOTH GOP AND MARCONA.

A. EXPLORE SOME FORM OF GOOD FAITH DECLARATION THAT GOP AGREES TO PAY ADEQUATE COMPENSATION WHEN TECHNICAL AUDIT COMPLETE IN EXCHANGE FOR USG AGREEMENT NOT TO APPLY SANCTIONS AGAINST GOP IN THE INTERIM PERIOD;

B. MODIFICATION OF INTERIM AGREEMENT DELETING ESCROW PROVISIONS IN WAY MORE ACCEPTABLE TO GOP BUT ALSO SATISFACTORY TO MARCONA;

C. ATTEMPT TO REACH AGREEMENT WITH PERU TO BROADEN THE APPROACH TO BE USED BY THE PERUVIAN AUDITORS TO INCLUDE OTHER VALUATION TECHNIQUES SUCH AS GOING CONCERN, IN ADDITION TO NET BOOK VALUE (BOTH METHODS ARE APPARENTLY PERMISSIBLE UNDER PERUVIAN LAW);

D. FINALLY, SAID FISHLOW, HE FELT OBLIGED TO GIVE MARCONA AN OPPORTUNITY TO CONSIDER AN OPTION FOR SETTLEMENT WHICH HE FELT HE HAD SOME CHANCE OF NEGOTIATING DURING THIS TRIP, BUT WHICH MIGHT NOT BE AVAILABLE LATER. ESSENTIALLY THE STRATEGY WOULD ALLOW PERUVIANS TO USE BOOK VALUE APPROACH, THEREBY MEETING PERU'S POLITICAL CLAIMS, WHILE SIMULTANEOUSLY MAKING THE MAXIMAL ECONOMIC CLAIMS TECHNICALLY FEASIBLE UNDER THESE PROCEDURES. SUCH AN APPROACH, WHICH COULD ALSO RECONCILE THE DIFFERENT SETS OF BOOKS, AFTER MAKING APPROPRIATE DEDUCTIONS FOR DEBTS AND TAX CLAIMS WOULD LEAD TO A FINAL NET CASH SUM IN THE \$50-55 MILLION RANGE. FISHLOW SAID HE THOUGHT THAT IF PRESENTED TO THE GOP ON A TAKE IT OR LEAVE IT BASIS NOW, BEFORE THE AUDIT WAS VERY FAR ALONG, THIS APPROACH HAD A GOOD CHANCE OF BEING ACCEPTED BY GOP AND TOGETHER WITH PROFITS MARCONA MIGHT EARN FROM SHIPPING ARRANGEMENTS MIGHT PROVE A POSSIBLE CONFIDENTIAL

PAGE 04 STATE 272498

BASIS FOR COMPENSATION. FISHLOW WAS NOT RECOMMENDING THIS APPROACH, ONLY INFORMING MARCONA THAT SUCH AN APPROACH MIGHT BE FEASIBLE.

5. DISCUSSION QUICKLY FOCUSED ON OPTIONS A AND D. BRADFIELD STATED THAT TO AGREE TO OPTION A WOULD BE A SIGN OF WEAKNESS ON OUR PART AND WOULD SIGNAL THE GOP TO COME IN WITH A SMALL FINAL NUMBER. IN RESPONSE TO BRADFIELD'S QUESTION ABOUT WHETHER USG NOW PREPARED TO ACCEPT POSITION THAT GOP NEGOTIATING IN GOOD FAITH, TEAM MEMBERS POINTED OUT THAT SUCH A DECISION WOULD HAVE TO BE MADE IN WASHINGTON. THEY INDICATED THAT IT WAS NOT POSSIBLE TO PREDICT WITH ANY CERTAINTY WHAT THAT DECISION MIGHT BE, BUT SOME SUGGESTED AN "APPROPRIATE STEPS" FINDING WAS A DISTINCT POSSIBILITY. OTHERS THOUGHT IT WAS UNLIKELY. ALL MEMBERS AGREED THAT ON THE BASIS OF REASONABLE METHODS THE MARCONA BOTTOM LINE FIGURE OF \$100 MILLION MAY WELL NOT BE THE MINIMUM THE USG WOULD CONSIDER AS ADEQUATE COMPENSATION IN THIS CASE. FURTH STATED THAT MARCONA WOULD NOT ACCEPT OPTION D BECAUSE IT IS BASED ON BOOK VALUE AND THE DEDUCTIONS FOR THE BANCO NACIONAL DEBT AND ADJUSTMENTS TO DEPRECIATION NOT VALID. FISHLOW REPEATED U.S. TEAM NOT

TRYING TO PRESSURE MARCONA TO ACCEPT ANY FIGURE BUT WE OWED IT TO MARCONA TO PRESENT ALL THE OPTIONS. HE NOTED THAT WHILE THIS OPTION MIGHT BE POLITICALLY ACCEPTABLE NOW, HE DID NOT BELIEVE THE OPPORTUNITY WOULD REMAIN BEYOND THIS TRIP.

6. FURTH STATED THAT THE TIME HAD COME TO NOT PUT ANOTHER NEW PROPOSAL FORWARD AT THIS TIME BECAUSE THE GOP REJECTED ALL PAST EFFORTS AND ALL THAT COULD BE DONE HAD BEEN DONE. MARCONA WOULD WAIT, BUT CLEARLY LEFT IMPRESSION THEY WERE CONVINCED GOP WAS IN BAD FAITH, AND MIGHT PREFER SANCTIONS APPLIED NOW.

7. FISHLOW THEN TURNED DISCUSSION TO OPTION B. WAS THERE SOME WAY WE COULD WORK OUT INTERIM AGREEMENT ACCEPTABLE TO MARCONA WITHOUT ESCROW PROVISION? WE HAVE GAINED MOMENTUM IN THIS ROUND THAT WE DO NOT NOW WANT TO LOSE. PERHAPS IT WOULD BE POSSIBLE TO SUBSTITUTE MINPECO FOR THE GOP? DISCUSSION THEN FOCUSED ON RESUMPTION OF SHIPMENTS UNDER CONFIDENTIAL

PAGE 05 STATE 272498

CONTRACTUAL FOB PRICE PROVISIONS THAT WOULD YIELD MARCONA BOTH COMMISSION AND SHIPPING PROFITS AT AN ANNUAL RATE OF AT LEAST \$15 MILLION. FISHLOW SUGGESTED A RECESS THAT WOULD PERMIT MARCONA OFFICIALS TO DRAFT LANGUAGE THAT MIGHT BE USED WITH GOP.

8. MARCONA OFFICIALS RETURNED WITH DRAFT OF LETTER FROM MINPECO TO MARCONA WHICH WOULD MEET THEIR REQUIREMENTS FOR AN INTERIM ARRANGEMENT TO GET THE ORE MOVING. DRAFT LETTER ESSENTIALLY CALLED FOR MINPECO TO SAY THAT IT WAS PREPARED TO ENTER INTO CONTRACTS COVERING 90 DAY PERIOD WITH TRADITIONAL CUSTOMERS ON FOB BASIS ON TERMS AND CONDITIONS CONTAINED IN PREEXISTING MARCONA CONTRACTS.

9. FURTH EXPLAINED THAT SUCH AN APPROACH HAD SEVERAL ADVANTAGES. FROM GOP VIEWPOINT: (1) PERU IS REESTABLISHED IN THE IRON ORE MARKETS, (2) MINPECO DEALS DIRECTLY WITH CUSTOMERS, (3) PERU GAINS NEEDED FOREIGN EXCHANGE, AND GOP LEFT FREE TO MAKE DEALS ON BEST TERMS IT CAN GET IN ADDITION TO THOSE FLOWING FROM PREVIOUS MARCONA CONTRACTS. MARCONA: (1) EARNS MONEY ON SHIPPING AND (2) REALIZES THROUGH ARRANGEMENTS WITH BUYERS THE FOUR PERCENT COMMISSION THAT WAS IN PREVIOUS CONTRACTS ON CIF BASIS, AND (3) OBTAINS OFFICIAL RECOGNITION OF ITS CONTINUED PARTICIPATION IN BUSINESS ARRANGEMENTS IN PERU.

10. FURTH EMPHASIZED IMPORTANCE OF HAVING PERU CROSS NOW THE POLITICAL BARRIER OF DOING BUSINESS WITH MARCONA. THIS WOULD GIVE MARCONA OPPORTUNITY TO PROVE ITS WORTH TO PERU UNDER NEW CIRCUMSTANCES AND WOULD MAKE IT EASIER AT LATER STAGE FOR PERU TO WORK OUT ROLE FOR MARCONA WHICH MIGHT

BE SIGNIFICANT ELEMENT IN COMPENSATION PACKAGE. HE VIEWED THE CHANGE IN THE ENVIRONMENT WHICH WOULD RESULT AS OF CRITICAL IMPORTANCE. HE THEREFORE PREFERRED THAT SUCH INTERIM ARRANGEMENT NOT BE LINKED TO ANY PRIOR AGREEMENT ON SETTLEMENT TERMS THAT MIGHT NOW BE REALISTICALLY OBTAINABLE.

11. WASHINGTON TEAM SAID IT WAS PREPARED TO EXPLORE THIS APPROACH TO AN INTERIM ARRANGEMENT WITH THE GOP. IT WAS NOTED, HOWEVER, THAT, WHILE THERE WAS MAJOR CONCESSION INVOLVED IN ELIMINATION OF ESCROW CONCEPT, THERE WAS A CONFIDENTIAL

PAGE 06 STATE 272498

TOUGHENING OF OUR POSITION IN TWO IMPORTANT RESPECTS: (1) MARCONA WOULD BE GETTING BENEFIT OF FOUR PERCENT COMMISSION FEATURE OF PREVIOUS CONTRACTS, EVEN THOUGH IT WOULD NOT BE DIRECTLY PAID BY PERU, AND (2) REQUIREMENT OF LETTER TO MARCONA FROM MINPECO WAS MORE EXPLICIT RECOGNITION OF MARCONA ROLE. MARCONA AGREED TO SOME DRAFTING CHANGES, E.G. SPECIFICATION OF PREVIOUS CONTRACT TERMS RATHER THAN REFERENCE TO "MARCONA CONTRACTS", ON BASIS THAT THEY WOULD BE HELPFUL IN POLITICAL TERMS TO GOP.

11. COMMENT: THIS MEETING WITH MARCONA WAS OF CRITICAL SIGNIFICANCE. IT EXPOSED TO THEM THAT USG THINKING HAD NOT REPEAT NOT CRYSTALIZED ON \$100 MILLION AS ADEQUATE COMPENSATION AND THAT ULTIMATE SETTLEMENT OFFERED BY GOP WOULD HAVE TO BE EVALUATED IN THAT LIGHT. IT ALSO TURNED THEM AROUND TO A CONSTRUCTIVE STANCE REGARDING THESE NEGOTIATIONS WHEN THEY WERE PREPARED TO GIVE UP.
DEAN
UNQUOTE KISSINGER

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